

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10527 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

VANMALI MULJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10527 of 1993
MR BJ JADEJA for Petitioner No. 1-2
Mr. L.R. Poojari, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioners, by way this Special Civil Application under Article 227 of the Constitution of India, have challenged the validity and legality of the orders passed by the Gujarat Revenue Tribunal dated 30th

September 1993 and in dismissing the same and confirming the order passed by the Mamlatdar and ALT, Dasada, and Deputy Collector, Dhrangadhra in trying to take possession of 14 acres and 1 guntha of land from them.

2. One Nurabhai Dadabhai Vepari, respondent No.3 herein was owner of land admeasuring 88 acres of land situate at Village Dasada and as the said land was in excess of the ceiling limits prescribed under the provisions of the Gujarat Agricultural Land (Ceiling & Regulation) Act [hereinafter referred to as "the Act"], he has filled-in necessary declaration/form, and the Mamlatdar and ALT, Dasada by his judgment and order dated 3rd December 1980 declared 34 acres and 24 gunthas of land as surplus land. That it seems that before final order dated 3rd December 1980 came to be passed by the Mamlatdar and ALT declaring 34 acres and 24 gunthas of land as surplus land under the provisions of the Act the said respondent No.3 had transferred by way of sale the land bearing Survey No. 354-Part admeasuring 3 acres and 5 gunthas of land and Survey No. 355 admeasuring 3 acres and 36 gunthas of land to the present petitioner No.1 in the year 1978. Similarly, the respondent No.3 had also transferred by way of sale land bearing Survey No. 354-Part admeasuring 7 acres to petitioner No.2. Thus the respondent No.3 had transferred in all 14 acres and 1 guntha of land to the petitioners.

3. As stated hereinabove by order dated 3rd December 1980 the Mamlatdar and ALT, Dhrangadhra, declared 34 acres and 24 gunthas of land as surplus land from the holding of respondent No.3. From the record, it is borne out that against said order passed by the Mamlatdar and ALT declaring 34 acres and 24 gunthas of land as surplus land from the holding of respondent No.1, he had preferred appeal before the Deputy Collector, which came to be dismissed, against which he has also preferred Revision Application No. TEN.BA 616/81, which also came to be dismissed by the Gujarat Revenue Tribunal, by its judgment and order dated 11.2.1982. It also transpires from the record that a review application also came to be filed by him being application No. TEN.CA 32/82 which also came to be dismissed by the Gujarat Revenue Tribunal, by its order dated 11.1.1983.

4. Thereafter, it seems that on conclusion of the aforesaid proceedings under the provisions of the Act, the petitioners were served with one notice from the office of the Mamlatdar and ALT, Dasada, dated 27.11.1992 by which they have threatened to take possession of the land in question, i.e., the lands which were purchased by

the petitioners from the respondent No.3 in the year 1978 and therefore immediately the petitioners had preferred appeal before the Deputy Collector, Dhrangadhra, which was numbered as Appeal No. 4/92-93. The petitioners have submitted before the appellate authority that while passing an order to take possession of the surplus land the authorities have not considered the provisions of Section 15 and Section 17 of the Act. However, without considering the said argument the Deputy Collector, Dhrangadhra by his judgment and order dated 31st December 1992 dismissed the said appeal by holding that the transfer in favour of the petitioners by respondent No.3 was hit by the provisions of the Act and therefore it is no transaction in the eye of law.

5. That being aggrieved and dissatisfied with the said judgment and order dated 31st December 1992 passed by the Deputy Collector, Dhrangadhra, in Appeal No. 4/1992-93, the petitioners preferred Revision Application, being TEN.BA 5/93 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its judgment and 30th September 1993 dismissed the said Revision Application. That being aggrieved and dissatisfied with the aforesaid orders, the present Special Civil Application is filed under Article 227 of the Constitution of India.

6. Shri B.J. Jadeja, learned advocate appearing for the petitioners, has submitted that while passing an order of taking possession of the surplus land all the authorities below have not considered the provisions of Section 15 and Section 17 of the Act. It has also been submitted by Shri Jadeja that though a specific point was raised before the Deputy Collector to the effect that provisions of Section 17 of the Act are not followed and that the possession of surplus land is first to be taken from the original land owner, and if thereafter any surplus land is to be taken then the same can be taken from the holding and possession of the petitioners. In spite of the aforesaid fact, no efforts have been taken by the authority to take possession of the surplus land from the respondent No.3 and there is a breach of provisions of Section 17 of the Act.

7. On the other hand, Shri K.T. Dave, learned AGP appearing on behalf of respondents No. 1 and 2, has submitted that the transaction in favour of the petitioners was hit by the provisions of Section 7 and 8 of the Act and only with a view to defeat the provisions of the Act, the respondent No.3 has sold the land in question to the petitioners and it prima facie seems that

as the respondent No.3 has lost upto Gujarat Revenue Tribunal only with a view to favour him the proceedings have been initiated by the petitioners. It is pertinent to note that though an argument was raised with regard to not following of the provisions of Section 17 of the Act, learned AGP, Shri Dave has not been in a position to point out anything whether the provisions of Section 17 of the Act have been followed/considered or not.

8. On consideration of the provisions of the Act, more particularly Section 17 of the Act, it is crystal clear that if the total land excluding the land which was transferred in contravention of the provisions of the Act is more than or equal to the extent of surplus land specified in this case, then the surplus land shall come out of such total land, i.e. from the land of the original-land owner. Sub-section (2) of Section 17 of the Act also says that if said total land is less than the extent of such surplus land, then the surplus land shall first come out of whole of such total land (from the holding of the original land owner) and the vacant land shall come out of the land referred to in clause (b) of the proviso to Section 15, i.e., from the land which is transferred in breach of the provisions of the Act. Thus, considering the provisions of Section 17 of the Act the possession of the land which is declared as excess vacant land, i.e. 34 acres and 24 gunthas of land is first to be taken from the land which is in possession of the respondent No.3. Therefore, the authority could not have first tried to take the possession of the land from the petitioners who will be falling in Clause (b) of Section 15 of the Act, and from the record it seems that respondents No. 1 and 2 have not considered the provisions of Section 15 and Section 17 of the Act before passing the order to take possession of the surplus land first from the petitioner's land.

9. Thus, in this view of the matter, the matter is required to be remanded to the competent authority with a direction to follow the provisions of Section 15 and Section 17 of the Act and try to take possession of the surplus land first from the holding of respondent No.3 and if it is not possible to take the possession for some reason either by way of subsequent transfer or for some other reason, then the remaining land which is declared as surplus land and possession of which can be taken from the petitioners. Under the circumstances, the present Special Civil Application is required to be allowed and is accordingly allowed to the aforesaid extent and the matter is remanded to the competent authority for taking an appropriate decision in light of the observations made

hereinabove and considering the provisions of Sections 15 and 17 of the Act. The said exercise should be done within a period of 3 months from the date of receipt of writ of this Court. The Office is directed to issue writ to the respondents forthwith. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]